

Subsec. (i)(3). Pub. L. 98-369, § 211(b)(18)(C), substituted “section 810” for “section 812”.

1978—Subsec. (d)(4). Pub. L. 95-600 substituted “the rates of tax specified in section 11(b)” for “the normal tax rate provided by section 11(b) and the surtax rate provided by section 11(c) which are in effect”.

1976—Subsecs. (a)(2), (d)(2). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (d)(3). Pub. L. 94-455, § 1031(b)(3), struck out provisions relating to an election to have limitation provided by section 904(a)(2) apply and to revocation of such an election previously made.

Subsec. (i). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(12) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 211(b)(18) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(25) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as a note under section 11 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(3) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1975, with exceptions for certain mining operations, and for income from possessions, see section 1031(c) of Pub. L. 94-455, set out as a note under section 904 of this title.

#### EFFECTIVE DATE

Section 2 of Pub. L. 89-384, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by section 1 (except subsection (b)) [enacting this section and section 6167 of this title and amending sections 46, 901, 6503, and 6601 of this title] shall apply with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] added by section 1(a)) sustained after December 31, 1958.”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

### Subchapter R—Election To Determine Corporate Tax on Certain International Shipping Activities Using Per Ton Rate

Sec.  
1352. Alternative tax on qualifying shipping activities.

Sec.  
1353. Notional shipping income.  
1354. Alternative tax election; revocation; termination.  
1355. Definitions and special rules.  
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#### PRIOR PROVISIONS

A prior subchapter R, consisting of section 1361, related to election of certain partnerships and proprietorships to be taxed as domestic corporations, prior to repeal by Pub. L. 89-389, § 4(b)(1), Apr. 14, 1966, 80 Stat. 116, effective Jan. 1, 1969.

### § 1352. Alternative tax on qualifying shipping activities

In the case of an electing corporation, the tax imposed by section 11 shall be the amount equal to the sum of—

- (1) the tax imposed by section 11 determined after the application of this subchapter, and
- (2) a tax equal to—
  - (A) the highest rate of tax specified in section 11, multiplied by
  - (B) the notional shipping income for the taxable year.

(Added Pub. L. 108-357, title II, § 248(a), Oct. 22, 2004, 118 Stat. 1450.)

#### EFFECTIVE DATE

Subchapter applicable to taxable years beginning after Oct. 22, 2004, see section 248(c) of Pub. L. 108-357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

### § 1353. Notional shipping income

#### (a) In general

For purposes of this subchapter, the notional shipping income of an electing corporation shall be the sum of the amounts determined under subsection (b) for each qualifying vessel operated by such electing corporation.

#### (b) Amounts

##### (1) In general

For purposes of subsection (a), the amount of notional shipping income of an electing corporation for each qualifying vessel for the taxable year shall equal the product of—

- (A) the daily notional shipping income, and
- (B) the number of days during the taxable year that the electing corporation operated such vessel as a qualifying vessel in United States foreign trade.

##### (2) Treatment of vessels the income from which is not otherwise subject to tax

In the case of a qualifying vessel any of the income from which is not included in gross income by reason of section 883 or otherwise, the amount of notional shipping income from such vessel for the taxable year shall be the amount which bears the same ratio to such shipping income (determined without regard to this paragraph) as the gross income from the operation of such vessel in the United States foreign trade bears to the sum of such gross income and the income so excluded.

**(c) Daily notional shipping income**

For purposes of subsection (b), the daily notional shipping income from the operation of a qualifying vessel is—

- (1) 40 cents for each 100 tons of so much of the net tonnage of the vessel as does not exceed 25,000 net tons, and
- (2) 20 cents for each 100 tons of so much of the net tonnage of the vessel as exceeds 25,000 net tons.

**(d) Multiple operators of vessel**

If for any period 2 or more persons are operators of a qualifying vessel, the notional shipping income from the operation of such vessel for such period shall be allocated among such persons on the basis of their respective ownership, charter, and operating agreement interests in such vessel or on such other basis as the Secretary may prescribe by regulations.

(Added Pub. L. 108-357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1450; amended Pub. L. 109-135, title IV, §403(g)(1)(A), Dec. 21, 2005, 119 Stat. 2624.)

**AMENDMENTS**

2005—Subsec. (d). Pub. L. 109-135 substituted “ownership, charter, and operating agreement interests” for “ownership and charter interests”.

**EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

**§ 1354. Alternative tax election; revocation; termination****(a) In general**

A qualifying vessel operator may elect the application of this subchapter.

**(b) Time and manner; years for which effective**

An election under this subchapter—

- (1) shall be made in such form as prescribed by the Secretary, and
- (2) shall be effective for the taxable year for which made and all succeeding taxable years until terminated under subsection (d).

Such election may be effective for any taxable year only if made on or before the due date (including extensions) for filing the corporation's return for such taxable year.

**(c) Consistent elections by members of controlled groups**

An election under subsection (a) by a member of a controlled group shall apply to all qualifying vessel operators that are members of such group.

**(d) Termination****(1) By revocation****(A) In general**

An election under subsection (a) may be terminated by revocation.

**(B) When effective**

Except as provided in subparagraph (C)—

- (i) a revocation made during the taxable year and on or before the 15th day of the 3d

month thereof shall be effective on the 1st day of such taxable year, and

- (ii) a revocation made during the taxable year but after such 15th day shall be effective on the 1st day of the following taxable year.

**(C) Revocation may specify prospective date**

If the revocation specifies a date for revocation which is on or after the day on which the revocation is made, the revocation shall be effective for taxable years beginning on and after the date so specified.

**(2) By person ceasing to be qualifying vessel operator****(A) In general**

An election under subsection (a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an electing corporation) such corporation ceases to be a qualifying vessel operator.

**(B) When effective**

Any termination under this paragraph shall be effective on and after the date of cessation.

**(C) Annualization**

The Secretary shall prescribe such annualization and other rules as are appropriate in the case of a termination under this paragraph.

**(e) Election after termination**

If a qualifying vessel operator has made an election under subsection (a) and if such election has been terminated under subsection (d), such operator (and any successor operator) shall not be eligible to make an election under subsection (a) for any taxable year before its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

(Added Pub. L. 108-357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1451; amended Pub. L. 109-135, title IV, §403(g)(4), Dec. 21, 2005, 119 Stat. 2624.)

**AMENDMENTS**

2005—Subsec. (b). Pub. L. 109-135 inserted “on or” after “only if made” in concluding provisions.

**EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

**§ 1355. Definitions and special rules****(a) Definitions**

For purposes of this subchapter—

**(1) Electing corporation**

The term “electing corporation” means any corporation for which an election is in effect under this subchapter.

**(2) Electing group; controlled group****(A) Electing group**

The term “electing group” means a controlled group of which one or more members is an electing corporation.

**(B) Controlled group**

The term “controlled group” means any group which would be treated as a single employer under subsection (a) or (b) of section 52 if paragraphs (1) and (2) of section 52(a) did not apply.

**(3) Qualifying vessel operator**

The term “qualifying vessel operator” means any corporation—

(A) who operates one or more qualifying vessels, and

(B) who meets the shipping activity requirement in subsection (c).

**(4) Qualifying vessel**

The term “qualifying vessel” means a self-propelled (or a combination self-propelled and non-self-propelled) United States flag vessel of not less than 6,000 deadweight tons used exclusively in the United States foreign trade during the period that the election under this subchapter is in effect.

**(5) United States flag vessel**

The term “United States flag vessel” means any vessel documented under the laws of the United States.

**(6) United States domestic trade**

The term “United States domestic trade” means the transportation of goods or passengers between places in the United States.

**(7) United States foreign trade**

The term “United States foreign trade” means the transportation of goods or passengers between a place in the United States and a foreign place or between foreign places.

**(b) Operating a vessel**

For purposes of this subchapter—

**(1) In general**

Except as provided in paragraph (2), a person is treated as operating any vessel during any period if—

(A)(i) such vessel is owned by, or chartered (including a time charter) to, the person, or

(ii) the person provides services for such vessel pursuant to an operating agreement, and

(B) such vessel is in use as a qualifying vessel during such period.

**(2) Bareboat charters**

A person is treated as operating and using a vessel that it has chartered out on bareboat charter terms only if—

(A)(i) the vessel is temporarily surplus to the person's requirements and the term of the charter does not exceed 3 years, or

(ii) the vessel is bareboat chartered to a member of a controlled group which includes such person or to an unrelated person who sub-bareboats or time charters the vessel to such a member (including the owner of the vessel), and

(B) the vessel is used as a qualifying vessel by the person to whom ultimately chartered.

**(c) Shipping activity requirement**

For purposes of this section—

**(1) In general**

Except as otherwise provided in this subsection, a corporation meets the shipping ac-

tivity requirement of this subsection for any taxable year only if the requirement of paragraph (4) is met for each of the 2 preceding taxable years.

**(2) Special rule for 1st year of election**

A corporation meets the shipping activity requirement of this subsection for the first taxable year for which the election under section 1354(a) is in effect only if the requirement of paragraph (4) is met for the preceding taxable year.

**(3) Controlled groups**

A corporation who is a member of a controlled group meets the shipping activity requirement of this subsection only if such requirement is met determined by treating all members of such group as 1 person.

**(4) Requirement**

The requirement of this paragraph is met for any taxable year if, on average during such year, at least 25 percent of the aggregate tonnage of qualifying vessels used by the corporation were owned by such corporation or chartered to such corporation on bareboat charter terms.

**(d) Activities carried on partnerships, etc.**

In applying this subchapter to a partner in a partnership—

(1) each partner shall be treated as operating vessels operated by the partnership,

(2) each partner shall be treated as conducting the activities conducted by the partnership, and

(3) the extent of a partner's ownership, charter, or operating agreement interest in any vessel operated by the partnership shall be determined on the basis of the partner's interest in the partnership.

A similar rule shall apply with respect to other pass-thru entities.

**(e) Effect of temporarily ceasing to operate a qualifying vessel****(1) In general**

For purposes of subsections (b) and (c), an electing corporation shall be treated as continuing to use a qualifying vessel during any period of temporary cessation if the electing corporation gives timely notice to the Secretary stating—

(A) that it has temporarily ceased to operate the qualifying vessel, and

(B) its intention to resume operating the qualifying vessel.

**(2) Notice**

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

**(3) Period disregard in effect**

The period of temporary cessation under paragraph (1) shall continue until the earlier of the date on which—

(A) the electing corporation abandons its intention to resume operation of the qualifying vessel, or

(B) the electing corporation resumes operation of the qualifying vessel.

**(f) Effect of temporarily operating a qualifying vessel in the United States domestic trade****(1) In general**

For purposes of this subchapter, an electing corporation shall be treated as continuing to use a qualifying vessel in the United States foreign trade during any period of temporary use in the United States domestic trade if the electing corporation gives timely notice to the Secretary stating—

(A) that it temporarily operates or has operated in the United States domestic trade a qualifying vessel which had been used in the United States foreign trade, and

(B) its intention to resume operation of the vessel in the United States foreign trade.

**(2) Notice**

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

**(3) Period disregard in effect**

The period of temporary use under paragraph (1) continues until the earlier of the date of<sup>1</sup> which—

(A) the electing corporation abandons its intention to resume operations of the vessel in the United States foreign trade, or

(B) the electing corporation resumes operation of the vessel in the United States foreign trade.

**(4) No disregard if domestic trade use exceeds 30 days**

Paragraph (1) shall not apply to any qualifying vessel which is operated in the United States domestic trade for more than 30 days during the taxable year.

**(g) Great Lakes domestic shipping to not disqualify vessel****(1) In general**

If the electing corporation elects (at such time and in such manner as the Secretary may require) to apply this subsection for any taxable year to any qualifying vessel which is used in qualified zone domestic trade during the taxable year—

(A) solely for purposes of subsection (a)(4), such use shall be treated as use in United States foreign trade (and not as use in United States domestic trade), and

(B) subsection (f) shall not apply with respect to such vessel for such taxable year.

**(2) Effect of temporarily operating vessel in United States domestic trade**

In the case of a qualifying vessel to which this subsection applies—

**(A) In general**

An electing corporation shall be treated as using such vessel in qualified zone domestic trade during any period of temporary use in the United States domestic trade (other than qualified zone domestic trade) if the electing corporation gives timely notice to the Secretary stating—

(i) that it temporarily operates or has operated in the United States domestic trade (other than qualified zone domestic trade) a qualifying vessel which had been used in the United States foreign trade or qualified zone domestic trade, and

(ii) its intention to resume operation of the vessel in the United States foreign trade or qualified zone domestic trade.

**(B) Notice**

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

**(C) Period disregard in effect**

The period of temporary use under subparagraph (A) continues until the earlier of the date of which—

(i) the electing corporation abandons its intention to resume operations of the vessel in the United States foreign trade or qualified zone domestic trade, or

(ii) the electing corporation resumes operation of the vessel in the United States foreign trade or qualified zone domestic trade.

**(D) No disregard if domestic trade use exceeds 30 days**

Subparagraph (A) shall not apply to any qualifying vessel which is operated in the United States domestic trade (other than qualified zone domestic trade) for more than 30 days during the taxable year.

**(3) Allocation of income and deductions to qualifying shipping activities**

In the case of a qualifying vessel to which this subsection applies, the Secretary shall prescribe rules for the proper allocation of income, expenses, losses, and deductions between the qualified shipping activities and the other activities of such vessel.

**(4) Qualified zone domestic trade**

For purposes of this subsection—

**(A) In general**

The term “qualified zone domestic trade” means the transportation of goods or passengers between places in the qualified zone if such transportation is in the United States domestic trade.

**(B) Qualified zone**

The term “qualified zone” means the Great Lakes Waterway and the St. Lawrence Seaway.

**(h) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 108-357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1452; amended Pub. L. 109-135, title IV, §403(g)(1)(B)-(2), Dec. 21, 2005, 119 Stat. 2624; Pub. L. 109-222, title II, §205(a), May 17, 2006, 120 Stat. 350; Pub. L. 109-432, div. A, title IV, §§413(a), 415(a), Dec. 20, 2006, 120 Stat. 2963.)

## AMENDMENTS

2006—Subsec. (a)(4). Pub. L. 109-432, §413(a), substituted “6,000” for “10,000 (6,000, in the case of taxable

<sup>1</sup> So in original.

years beginning after December 31, 2005, and ending before January 1, 2011”.

Pub. L. 109-222 inserted “(6,000, in the case of taxable years beginning after December 31, 2005, and ending before January 1, 2011)” after “10,000”.

Subsecs. (g), (h). Pub. L. 109-432, §415(a), added subsec. (g) and redesignated former subsec. (g) as (h).

2005—Subsec. (a)(8). Pub. L. 109-135, §403(g)(1)(B), struck out heading and text of par. (8). Text read as follows: “The term ‘charter’ includes an operating agreement.”

Subsec. (b)(1). Pub. L. 109-135, §403(g)(1)(C), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Except as provided in paragraph (2), a person is treated as operating any vessel during any period if such vessel is—

“(A) owned by, or chartered (including a time charter) to, the person, and

“(B) is in use as a qualifying vessel during such period.”

Subsec. (c)(3). Pub. L. 109-135, §403(g)(2), substituted “determined by treating all members of such group as 1 person.” for “determined—

“(A) by treating all members of such group as 1 person, and

“(B) by disregarding vessel charters between members of such group.”

Subsec. (d)(3). Pub. L. 109-135, §403(g)(1)(D), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “the extent of a partner’s ownership or charter interest in any vessel owned by or chartered to the partnership shall be determined on the basis of the partner’s interest in the partnership.”

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title IV, §413(b), Dec. 20, 2006, 120 Stat. 2963, provided that: “The amendment made by this section [amending this section] shall take effect as if included in section 205 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109-222].”

Pub. L. 109-432, div. A, title IV, §415(b), Dec. 20, 2006, 120 Stat. 2965, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 20, 2006].”

Pub. L. 109-222, title II, §205(b), May 17, 2006, 120 Stat. 350, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005.”

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109-135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which they relate, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

### § 1356. Qualifying shipping activities

#### (a) Qualifying shipping activities

For purposes of this subchapter, the term “qualifying shipping activities” means—

- (1) core qualifying activities,
- (2) qualifying secondary activities, and
- (3) qualifying incidental activities.

#### (b) Core qualifying activities

For purposes of this subchapter, the term “core qualifying activities” means activities in operating qualifying vessels in United States foreign trade.

#### (c) Qualifying secondary activities

For purposes of this section—

##### (1) In general

The term “qualifying secondary activities” means secondary activities but only to the ex-

tent that, without regard to this subchapter, the gross income derived by such corporation from such activities does not exceed 20 percent of the gross income derived by the corporation from its core qualifying activities.

#### (2) Secondary activities

The term “secondary activities” means—

(A) the active management or operation of vessels other than qualifying vessels in the United States foreign trade,

(B) the provision of vessel, barge, container, or cargo-related facilities or services to any person,

(C) other activities of the electing corporation and other members of its electing group that are an integral part of its business of operating qualifying vessels in United States foreign trade, including—

(i) ownership or operation of barges, containers, chassis, and other equipment that are the complement of, or used in connection with, a qualifying vessel in United States foreign trade,

(ii) the inland haulage of cargo shipped, or to be shipped, on qualifying vessels in United States foreign trade, and

(iii) the provision of terminal, maintenance, repair, logistical, or other vessel, barge, container, or cargo-related services that are an integral part of operating qualifying vessels in United States foreign trade, and

(D) such other activities as may be prescribed by the Secretary pursuant to regulations.

Such term shall not include any core qualifying activities.

#### (d) Qualifying incidental activities

For purposes of this section, the term “qualified incidental activities” means shipping-related activities if—

(1) they are incidental to the corporation’s core qualifying activities,

(2) they are not qualifying secondary activities, and

(3) without regard to this subchapter, the gross income derived by such corporation from such activities does not exceed 0.1 percent of the corporation’s gross income from its core qualifying activities.

#### (e) Application of gross income tests in case of electing group

In the case of an electing group, subsections (c)(1) and (d)(3) shall be applied as if such group were 1 entity, and the limitations under such subsections shall be allocated among the corporations in such group.

(Added Pub. L. 108-357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1454; amended Pub. L. 109-135, title IV, §403(g)(3), Dec. 21, 2005, 119 Stat. 2624.)

#### AMENDMENTS

2005—Subsec. (c)(2). Pub. L. 109-135, §403(g)(3)(B), inserted concluding provisions.

Subsec. (c)(3). Pub. L. 109-135, §403(g)(3)(A), struck out heading and text of par. (3). Text read as follows: “(A) IN GENERAL.—Such term shall not include any core qualifying activities.

“(B) NONELECTING CORPORATIONS.—In the case of a corporation (other than an electing corporation) which is a member of an electing group, any core qualifying activities of the corporation shall be treated as qualifying secondary activities (and not as core qualifying activities).”

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109-135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which they relate, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

### § 1357. Items not subject to regular tax; depreciation; interest

#### (a) Exclusion from gross income

Gross income of an electing corporation shall not include its income from qualifying shipping activities.

#### (b) Electing group member

Gross income of a corporation (other than an electing corporation) which is a member of an electing group shall not include its income from qualifying shipping activities conducted by such member.

#### (c) Denial of losses, deductions, and credits

##### (1) General rule

Subject to paragraph (2), each item of loss, deduction (other than for interest expense), or credit of any taxpayer with respect to any activity the income from which is excluded from gross income under this section shall be disallowed.

##### (2) Depreciation

###### (A) In general

Notwithstanding paragraph (1), the adjusted basis (for purposes of determining gain) of any qualifying vessel shall be determined as if the deduction for depreciation had been allowed.

###### (B) Method

###### (i) In general

Except as provided in clause (ii), the straight-line method of depreciation shall apply to qualifying vessels the income from operation of which is excluded from gross income under this section.

###### (ii) Exception

Clause (i) shall not apply to any qualifying vessel which is subject to a charter entered into before the date of the enactment of this subchapter.

#### (3) Interest

##### (A) In general

Except as provided in subparagraph (B), the interest expense of an electing corporation shall be disallowed in the ratio that the fair market value of such corporation's qualifying vessels bears to the fair market value of such corporation's total assets.

##### (B) Electing group

In the case of a corporation which is a member of an electing group, the interest expense of such corporation shall be disallowed in the ratio that the fair market

value of such corporation's qualifying vessels bears to the fair market value of the electing groups total assets.

(Added Pub. L. 108-357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1455.)

#### REFERENCES IN TEXT

The date of the enactment of this subchapter, referred to in subsec. (c)(2)(B)(ii), is the date of enactment of Pub. L. 108-357, which was approved Oct. 22, 2004.

### § 1358. Allocation of credits, income, and deductions

#### (a) Qualifying shipping activities

For purposes of this chapter, the qualifying shipping activities of an electing corporation shall be treated as a separate trade or business activity distinct from all other activities conducted by such corporation.

#### (b) Exclusion of credits or deductions

(1) No deduction shall be allowed against the notional shipping income of an electing corporation, and no credit shall be allowed against the tax imposed by section 1352(a)(2).<sup>1</sup>

(2) No deduction shall be allowed for any net operating loss attributable to the qualifying shipping activities of any person to the extent that such loss is carried forward by such person from a taxable year preceding the first taxable year for which such person was an electing corporation.

#### (c) Transactions not at arm's length

Section 482 applies in accordance with this subsection to a transaction or series of transactions—

(1) as between an electing corporation and another person, or

(2) as between an<sup>2</sup> person's qualifying shipping activities and other activities carried on by it.

(Added Pub. L. 108-357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1456.)

### § 1359. Disposition of qualifying vessels

#### (a) In general

If any qualifying vessel operator sells or disposes of any qualifying vessel in an otherwise taxable transaction, at the election of such operator, no gain shall be recognized if any replacement qualifying vessel is acquired during the period specified in subsection (b), except to the extent that the amount realized upon such sale or disposition exceeds the cost of the replacement qualifying vessel.

#### (b) Period within which property must be replaced

The period referred to in subsection (a) shall be the period beginning one year prior to the disposition of the qualifying vessel and ending—

(1) 3 years after the close of the first taxable year in which the gain is realized, or

(2) subject to such terms and conditions as may be specified by the Secretary, on such

<sup>1</sup> So in original. Probably should be section “1352(2).”.

<sup>2</sup> So in original.

later date as the Secretary may designate on application by the taxpayer.

Such application shall be made at such time and in such manner as the Secretary may by regulations prescribe.

**(c) Application of section to noncorporate operators**

For purposes of this section, the term “qualifying vessel operator” includes any person who would be a qualifying vessel operator were such person a corporation.

**(d) Time for assessment of deficiency attributable to gain**

If a qualifying vessel operator has made the election provided in subsection (a), then—

(1) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by such operator (in such manner as the Secretary may by regulations prescribe) of the replacement qualifying vessel or of an intention not to replace, and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

**(e) Basis of replacement qualifying vessel**

In the case of any replacement qualifying vessel purchased by the qualifying vessel operator which resulted in the nonrecognition of any part of the gain realized as the result of a sale or other disposition of a qualifying vessel, the basis shall be the cost of the replacement qualifying vessel decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

(Added Pub. L. 108-357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1456.)

**Subchapter S—Tax Treatment of S Corporations and Their Shareholders**

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II.	Tax treatment of shareholders.
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**PART I—IN GENERAL**

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**§ 1361. S corporation defined**

**(a) S corporation defined**

**(1) In general**

For purposes of this title, the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for such year.

**(2) C corporation**

For purposes of this title, the term “C corporation” means, with respect to any taxable year, a corporation which is not an S corporation for such year.

**(b) Small business corporation**

**(1) In general**

For purposes of this subchapter, the term “small business corporation” means a domestic corporation which is not an ineligible corporation and which does not—

(A) have more than 100 shareholders,

(B) have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual,

(C) have a nonresident alien as a shareholder, and

(D) have more than 1 class of stock.

**(2) Ineligible corporation defined**

For purposes of paragraph (1), the term “ineligible corporation” means any corporation which is—

(A) a financial institution which uses the reserve method of accounting for bad debts described in section 585,

(B) an insurance company subject to tax under subchapter L,

(C) a corporation to which an election under section 936 applies, or

(D) a DISC or former DISC.

**(3) Treatment of certain wholly owned subsidiaries**

**(A) In general**

Except as provided in regulations prescribed by the Secretary, for purposes of this title—

(i) a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation, and

(ii) all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

**(B) Qualified subchapter S subsidiary**

For purposes of this paragraph, the term “qualified subchapter S subsidiary” means any domestic corporation which is not an ineligible corporation (as defined in paragraph (2)), if—

(i) 100 percent of the stock of such corporation is held by the S corporation, and

(ii) the S corporation elects to treat such corporation as a qualified subchapter S subsidiary.

**(C) Treatment of terminations of qualified subchapter S subsidiary status**

**(i) In general**

For purposes of this title, if any corporation which was a qualified subchapter S subsidiary ceases to meet the requirements of subparagraph (B), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before